

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARY WRIGHT, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No.:12-1279-CV-W-SOW
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants.)	

ORDER

Before the Court is a Motion to Substitute the United States in Place of the Individually Named Federal Government Defendants (Doc. #7).

Plaintiffs filed the present case seeking monetary damages from the United States of America, the Kansas City Veterans Administration Medical Center (“VA”), Dr. Gerald Claycomb, and Dr. James Wolter for alleged medical malpractice. According to the Eighth Circuit, the Federal Tort Claims Act (“FTCA”) is the “exclusive remedy if: (1) the suit is against a federal agency; and (2) the suit sounds in tort.” Peak v. Small Bus. Admin., 660 F.2d 375, 377 (8th Cir. 1981). Furthermore, when a claim is brought pursuant to the FTCA, the United States is the proper defendant. Artis v. Petrovsky, 638 F.Supp. 51, 53 (W.D. Mo. 1986). It is also impermissible to bring a tort claim against a federal agency, or an individual, like the VA. Peak, 600 F.2d at 377. Consequently, for an FTCA claim regarding acts performed by federal employees during the course and scope of their employment, the United States should be substituted as the party defendant. Brown v. Armstrong, 949 F.2d 1007, 1010 (8th Cir. 1991).

In this case, the United States Attorney David M. Ketchmark certified that Dr. Claycomb and

Dr. Wolter were acting within the scope of their employment with the Government as an employee of the Department of Veterans Affairs. Further, because plaintiff has impermissibly named a government agency or employer as a defendant, the United States should be substituted as a party-defendant. As such, the Court will substitute the United States as the sole and proper defendant in this case.

Accordingly, it is hereby

ORDERED that the Motion to Substitute the United States in Place of the Individually Named Federal Government Defendants (Doc. #7) is granted.

/s/ Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

DATED: January 14, 2013